

RFP-7-77
Attachment B
CONTRACT FOR DENTAL BENEFITS BETWEEN STATE OF INDIANA AND
XXXXXX EFFECTIVE JANUARY 1, 2008

EDS # XXXXXX

WHEREAS, the State of Indiana, State Personnel Department acting by and through the Indiana Department of Administration issued on XXXXX Request for Proposal 7-XX (hereinafter "RFP") soliciting proposals to offer dental benefits for State of Indiana employees, retirees and participating local units of government as authorized by IC 5-10-8; and

WHEREAS, XXXXX, a dental benefit plan administrator and insurer holding a valid Certificate of Authority under the laws of the State of Indiana submitted their response to the above solicitation on XXXXX (hereinafter "Proposal"); and

NOW, THEREFORE, this Contract ("this Contract"), entered into by and between the State Personnel Department (the "State") and _____ (the "Contractor"), is executed pursuant to the terms and conditions set forth herein. In consideration of those mutual undertakings and covenants, the parties agree as follows:

1. Duties of Contractor

A. Incorporation by reference

- (1) The RFP 7-XX developed and distributed by the SPD and the IDOA and, the response to inquiries dated XXXXX are attached hereto as Exhibit A and incorporated by reference herein.
- (2) The Proposal submitted by the Corporation on XXXXX is hereby incorporated by reference into this Contract and is attached hereto as Exhibit B.
- (3) The Letter, dated XXXXX issued by IDOA selecting the Proposal for contract negotiations is hereby incorporated by reference into this Contract and is attached hereto as Exhibit C.
- (4) The Plan Document, together with related Endorsements, Riders, and Addenda are incorporated by reference into this Contract and attached hereto as Exhibit D.
- (5) The Local Binder Agreements are incorporated by reference into this Contract. A specimen Local Binder Agreement is attached hereto as Exhibit E.

- (6) The Business Associate Agreement is incorporated by reference into this Contract and is attached as Exhibit F.
- (7) Reference hereafter to certain of the subjects, topics, provisions, terms, obligations, rights, duties and other matters in the documents incorporated by reference are not meant to exclude the importance of other portions of said documents; rather, said references are intended to amplify upon or clarify the import, meaning and/or effect(s) thereof as same may relate to the rights, duties, and obligations of the parties to this Contract.

The reference or non-reference to certain portions of the documents incorporated by reference shall not preclude the reasonable construction of the terms of said instruments which may be required from time to time during the tenure of this Contract; provided, that when the parties desire the clarifying construction of significant areas of dispute said construction shall be consistent with the terms expressly set forth in this Contract and shall be effectuated only by the written mutual agreement of the parties hereto, or as otherwise provided in this Contract.

If there be any conflict between the provisions expressly contained in this document and any document incorporated by reference into this Contract or attached hereto, then the provisions expressly set forth in the first XX pages of this document shall govern.

- (8) The parties acknowledge that the Plan, as contained in Exhibit D, may be subject to approval of the Indiana Department of Insurance pursuant to and in the manner prescribed by law and/or regulation. The parties agree that subsequent additions or modifications to, or deletions from, said Plan shall be effectuated in accordance with the terms of this Contract; and the written acceptance or endorsement of all signatories to this Contract shall be required to make said additions, modifications, or deletions effective in accordance with [Article XX](#).

B. Scope

- (1) Contractor will administer the Dental Plan for State employees and retirees. The Dental Plan is attached hereto as Exhibit D. The Contractor does not insure or underwrite the liability of the State, for State employees and Early Retirees, under the Dental Plan. The State retains the ultimate responsibility for claims made under the Plan and all expenses incident to that Plan, except for the performance of Contractor duties which shall be performed by the Contractor at the contract prices set forth herein.
- (2) Contractor will insure and administer dental coverage under the dental plan for participating local units of government. Provisions relating to

local units of government are contained in Exhibit E. The premiums for the local units of government plans are paid by the local unit of government and/or the employees or retirees of the local unit of government.

- (3) Responsibilities under this contract include billing, eligibility, and account management services for eligible individuals compensated by the Auditor of State, Direct Bill/"Quasi" agencies, Early Retirees, COBRA participants, employees on leave of absence, and Local Units of Government.
- (4) Responsibilities under this contract do not include the State's Medicare Complementary Plan.
- (5) Benefits under this Contract do not include retail or mail order pharmaceuticals.
- (6) Except to the extent of contractor duties as specified herein, the State retains full and final authority and responsibility for the Plan, including notification to Plan Enrollees if this Plan is canceled for any reason. The Contractor is empowered to act on behalf of the State in connection with the Plans only as expressly stated under this contract or as mutually agreed to in writing by the parties.
- (7) Each party shall notify the other party of any legal actions against either party, which involves the Plan, or this Contract.

C. Administrative Responsibilities

- (1) The State of Indiana Personnel Department or State related organizations are responsible for the following functions:
 - (a) Enrollments (new and changed);
 - (b) Payroll deductions;
 - (c) Reimbursement of claims paid by the Contractor and payment of administrative charges as specified for the self insured plan;
 - (d) Written notification to Contractor of "last check" status of enrollee, for COBRA purposes;
 - (e) In accordance with the requirements under COBRA, timely notification of the availability of continuation coverage to eligible Enrollees or dependents.
 - (f) Establishment of open enrollment periods.
 - (g) To provide to the Contractor, accurate information concerning employees newly eligible for enrollment, termination of enrollees, address changes and family status changes affecting enrollment, within 30 days of the event.
 - (h) To provide to the Contractor, accurate information concerning over age 19 dependents who are students at an accredited educational institution.
- (2) The Contractor, or its authorized Subcontractors, will perform the following functions in support of the dental plans:

Claims Administration

- (a) Accurate processing of claims: Dental claims are received directly from enrollees and service providers. The Contractor will obtain and maintain all additional service provider or coordination of benefits information directly from service providers or other carriers. Payments and explanation of benefits forms (EOB's) are to be distributed directly to enrollees and service providers.
- (b) Develop and maintain an administrative manual for the State's Administrative Staff, and training of State of Indiana Staff;
- (c) Preparation and mailing to Enrollees homes of dental identification cards;
- (d) Preparation and delivery of claim forms to the State;
- (e) Provision of detailed explanation of benefits paid to each claimant;
- (f) Notification to claimants of rejected claims and the reason for rejection;
- (g) Investigation of claims;
- (h) Performance of internal and external audits on a random sample basis of claim payments with results reported to State Personnel Department;
- (i) Delivery of information as necessary regarding standard application or coordination of benefits;
- (j) Application of claims control procedures necessary for the effective implementation of the Plan;
- (k) Preparation of quarterly claim summaries including claimant identification, incurred date, and payments in broad categories;
- (l) Explanation of payment made directly to claimants;
- (m) Use the pursue and pay method of Coordination of Benefits;
- (n) Provide notice to the Enrollee and Provider if claim is pended and not adjudicated for more than thirty (30) days;
- (o) Maintain toll free telephone lines for pre-certification and to answer enrollee questions and assist with problems;
- (p) Make use of Contractor's dental and legal consultants in handling claims;
- (q) Make refunds of enrollees contributions and co-pays withheld in error directly to the employee;
- (r) Cause refunds of enrollees contributions withheld in error to be reflected in billings;
- (s) When possible, maintain all claim administration records by Social Security Number or PeopleSoft ID, as directed by the State.
- (t) Use Contractor's funds to pay claims pending receipt of State remittances for the non insured products;
- (u) Provide individual billings up to the maximum period provided under COBRA;
- (v) Consultation on financial management, benefit design, and actuarial projections;
- (w) Periodic assistance with open enrollment, including on-site enrollment meetings for employees across the State of Indiana;
- (x) Sharing information with and for the Cafeteria Plan Administrator, Administrator of Traditional Health plans, HMOs, Integrated Care Management System, and Local Units of Government.
- (y) Contractor will adjudicate disputed claim appeals.

Contract Administration

- (a) Dental late entrant services.
- (b) Standard direct claim system on dental benefits including:
 - i.) Toll-free direct enrollees counseling by contractor's claim staff to handle questions and problems on a routine basis.
 - ii.) Dental coverage verification by claim staff using information furnished by the State.
 - iii.) Custom benefit description booklets.
 - iv.) Prompt payment of proper claims.
- (c) Claim forms, form letters and enrollee booklets tailored to the specifications of the State.
- (d) Maintenance of eligibility records and eligibility listings by account based on information received from the State.
- (e) Standard quarterly claim tabulation reports.
- (f) Preparation and delivery of billings.
- (g) Provide to the State upon request, back up claim documentation and method of adjudicating claims.
- (h) Billing Plan participants for continuing coverage when on various approved leaves, such as family leave.
- (i) Billing of quasi agencies eligible to participate in the State of Indiana Plan.
- (j) Provide updates on state and federal legislation affecting the State Plan.
- (k) At least two (2) at home mailings per contract year will be provided to communicate plan benefits.
- (l) Provide to the State an annual report of dependents over age 19.
- (m) Provide representatives to meet quarterly with the State to review provider reports and resolve issues in the areas of claims, customer service, utilization, quality and others as may be requested by the State.

Financial Administration

- (a) Benefit adequacy studies and utilization reports.
- (b) Multi-divisional reports and disclosure.
- (c) Accounting for rates and claims paid, claims denied, claims pending but not yet paid and administration services fees, for the fee for service plan, as indicated below:
 - i) A detailed quarterly experience statement furnished no later than ninety days following the end of the Plan year. Administrative service fees are to be detailed as follows: total administrative fees, claim administration, contract administration, and other administrative costs.
 - ii) A lag study furnished annually on the dental plan.
 - iii) The State reserves the right to audit the claim files maintained by the Contractor or third party administrator at any time and without additional charge.
 - iv) Provide to the State quarterly reports reflecting PPO discount savings.

- (d) Underwriting/actuarial services including the rates (e.g. the suggestion of appropriate informational fees) and expected costs, benefit pricing for lag charges, calculation of incurred and unreported reserve liabilities, effects of changes in plan design, and annual experience report.
- (e) Use by the Contractor of its own funds to pay claims, pending receipt of remittances under this contract, for the self insured plan.

D. Eligibility

- (1) All active full-time (37.5 hours per week) employees and their eligible “dependents”.
- (2) All appointed or elected officials and their eligible “dependents”.
- (3) Employees eligible under the Short and Long Term Disability Program remain eligible during the period of disability.
- (4) “Dependent” means:
 - (a) Spouse of an employee;
 - (b) Any unmarried dependent children, step-children, foster children, legally adopted children of the employee or spouse, or children who reside in the employee’s home for whom the employee or spouse has been appointed legal guardian, under the age of 19 (or 23 if the child is a full-time student at an educational institution). Such child shall remain a “dependent” until marriage or the end of the calendar year in which he/she attains age 19/23. In the event a child who is a “dependent” as defined herein, is both
 - (i) incapable of self-sustaining employment by reason of mental or physical disability, and
 - (ii) Is chiefly Dependent upon the employee for support and maintenance;
 prior to age 19, such child’s coverage shall continue if satisfactory evidence of such disability and dependency is received within 120 days after the end of the calendar year in which the maximum age is attained. Coverage for the “Dependent” will continue until the employee discontinues his coverage or the disability no longer exists. A Dependent child of the employee who attained age 19 while covered under another Health Care policy and met the disability criteria specified above, is an eligible Dependent for enrollment so long as no break in Coverage longer than sixty-three (63) days has occurred immediately prior to enrollment.. Proof of disability and prior coverage will be required. The plan requires annual documentation from a physician after the child’s attainment of the limiting age.
- (5) A group health coverage program that is equal to that offered active employees shall be provided by the State for each “Retired Legislator” who meets the following:
 - (a) Is no longer a member of the General Assembly;

(b) Who served as a legislator for at least 10 years.

A retired legislator who is eligible for insurance coverage under this section may elect to have the legislator's spouse covered under the health insurance program. In addition, the surviving spouse of a legislator who has died may elect to participate in the group health insurance program if all of the following apply:

- (i) The deceased legislator would have been eligible to participate in the group health insurance program under this section had the legislator retired on the date of the legislator's death;
- (ii) The surviving spouse files a written request for insurance coverage with the employer;
- (iii) The surviving spouse pays an amount equal to the employer's and employee's premium for the group health coverage for an active employee.

The eligibility of the retired legislator's spouse, or a surviving spouse of a legislator for group health coverage is not affected by the death of the retired legislator and is not affected by the retired legislator's eligibility for Medicare. The spouse's eligibility ends on the earliest of the following:

- (i) When the employer terminates the health coverage program;
- (ii) The date of the spouse's remarriage;

"Dependent" for a "Retired Legislator" means an unmarried person who:

- (i) Is a dependent child, stepchild, foster child, or adopted child of a former legislator or spouse of a former legislator or a child who resides in the home of a former legislator or spouse of a former legislator who has been appointed legal guardian for the child; and
- (ii) Is less than twenty-three (23) years of age; at least twenty-three (23) years of age, incapable of self-sustaining employment by reason of mental or physical disability, and is chiefly dependent on a former legislator or spouse of a former legislator for support and maintenance; or at least twenty-three (23) years of age and less than twenty-five (25) years of age and is enrolled in and is a full-time student at an accredited college or university.

(6) "Retirees" meeting the following criteria will continue to be eligible until they become eligible for Medicare:

- (a) Must have reached age fifty-five (55) upon retirement but who is not eligible for Medicare;

- (b) Must have completed twenty (20) years of public service, ten (10) years of which must be continuous State service immediately preceding retirement;
 - (c) Must have fifteen (15) years of participation in a retirement fund.
- (7) “Retirees” meeting the following criteria will continue to be eligible until they become eligible for Medicare:
 - (a) Must retire after December 31, 2006.
 - (b) Must have reached age fifty-five (55) upon retirement but who is not eligible for Medicare;
 - (c) Must have completed fifteen (15) years of public service, ten (10) years of which must be continuous State service immediately preceding retirement.
- (8) “Retirees” meeting the following criteria will continue to be eligible until they become eligible for Medicare:
 - (a) Must have been employed as a teacher in a State institution under IC 11-10-5, IC 12-24-3, IC 16-33-3, or IC 16-33-4;
 - (b) Must have reached age fifty-five (55) upon retirement but who is not eligible for Medicare;
 - (c) Must have fifteen (15) years of service credit as a participant in the retirement fund of which the employee is a member on or before the employee’s retirement date; or must have completed ten (10) years of service credit as a participant in the retirement fund of which the employee is a member immediately before the employee’s retirement;
- (9) A group health coverage program that is equal to that offered active employees shall be provided by the State for each “Retired Judge” who meets the following:
 - (a) Retirement date is after June 30, 1990;
 - (b) Will have reached the age of sixty-two (62) on or before retirement date;
 - (c) Is not eligible for Medicare coverage as prescribed by 42 U.S.C. 1395 et seq.;
 - (d) Who has at least eight (8) years of service credit as a participant in the Judge’s retirement fund, with at least eight (8) years of service credit completed immediately preceding the Judge’s retirement.
- (10) A group health coverage program that is equal to that offered active employees shall be provided by the State for each “Retired Prosecuting Attorney” who meets the following:
 - (a) Who is a retired participant under the Prosecuting Attorney’s Retirement fund;
 - (b) Whose retirement date is after January 1, 1990;
 - (c) Who is at least sixty-two (62) years of age;

- (d) Who is not eligible for Medicare coverage as prescribed by 42 U.S.C. 1395 et seq.; and
 - (e) Who has at least ten (10) years of service credit as a participant in the Prosecuting Attorneys retirement fund, with at least ten (10) years of service credit completed immediately preceding the participant's retirement.
- (11) Retirees eligible under subsections 6, 7 or 8 must file a written request for the coverage within ninety (90) days after retirement. At that time, the retiree may elect to have the retiree's spouse covered. The spouse's subsequent eligibility to continue insurance under the surviving spouse's eligibility end on the earliest of the following:
- (a) Twenty-four (24) months from the date the deceased Retirees coverage is terminated. At the end of the period the spouse would be eligible to remain covered until the end of the maximum period under COBRA;
 - (b) When the spouse becomes eligible for Medicare coverage as prescribed by 42 U.S.C. 1395 et seq.
 - (c) The end of the month following remarriage; or
 - (d) As otherwise provided by Act of the General Assembly.
- (12) Employee on a leave of absence for ninety (90) days or less and out of pay status
- (13) An employee on family leave
- (14) Retirees eligible under IC 5-10-12.
- (15) A former legislator, dependent, or spouse as defined and pursuant to the conditions set forth in IC 5-10-8-8.2.
- (16) All active and retired full-time and part-time employees, elected or appointed officers and officials of a local unit of government that elect to provide health coverage under this plan. A local unit of government is defined as follows:
- (a) A city, town, county, township, public library, or school corporation
 - (b) Any board, commission, department, division, authority, institution, establishment, facility, or governmental unit under the supervision of either the state or a city, town, county, township, public library, or school corporation, having a payroll in relation to persons it immediately employs, even if it is not a separate taxing unit.
- (17) As otherwise provided by Act of the Indiana General Assembly.

E. Enrollment

State of Indiana Employees

- (1) New employees are given to the Monday following the end of the payroll period of their date of hire to enroll.

- (2) Elected officials and legislators must enroll by January 31st of the year following election or re-election.
- (3) Dependents born or acquired after the date of enrollment must be added within thirty (30) days of the marriage, birth, etc.
- (4) Enrollment or changes not in accordance with paragraph 1, 2 or 3 may be made as follows:
 - a) During open enrollment period(s) designated by the State;
 - b) Based on the interim qualifying events under Section 125 of the Internal Revenue Code;
 - c) Or for correction of errors.
- (5) Persons who have elected coverage hereunder and who have a payroll relationship to the State Auditor must authorize payroll deductions to pay their portion of the cost. Certain disabilitants, certain employees on leave without pay, retirees, local units of government and direct bill agencies remit fees directly to the Vendor.
- (6) All eligibles, disabilitants and their dependents must be allowed to enroll during open enrollment without regard to an active work requirement or pre-existing condition(s).

Local Unit of Government

- (1) New employees are given to the Monday following the end of the payroll period of their date of hire to enroll, unless otherwise modified by the Local Unit's Binder.
- (2) Elected officials must enroll by January 31st of the year following election or reelection, unless otherwise modified by the Local Unit's binder.
- (3) Dependents born or acquired after the date of enrollment must be added within thirty (30) days of the marriage, birth, etc.
- (4) Enrollment or changes not in accordance with paragraph 1, 2 or 3 may be made as follows:
 - a.) during open enrollment period(s) designated by the State;
 - b.) based on the interim qualifying events under Section 125 of the Internal Revenue Code.
- (5) Persons who have elected coverage hereunder and who have a payroll relationship to the Local Unit must authorize payroll deductions to pay their portion of the cost. Certain disabilitants, certain employees on leave without pay, Retirees and Local Units remit fees directly to the Vendor.
- (6) All eligibles, disabilitants and their dependents must be allowed to enroll during open enrollment without regard to an active work requirement or pre-existing condition(s).

F. Effective Date

- (1) For enrollees whose contribution is collected biweekly through payroll deduction by the State Auditor, coverage shall commence four (4) days after the payroll deduction is issued.
- (2) For enrollees whose contribution is collected through payroll deduction by a Local Unit of Government, coverage shall commence the first day of the calendar month following the first premium payment, unless the Binder establishes a different date.
- (3) For enrollees whose contribution is collected through payroll deduction by a direct bill agency, coverage shall commence the first day of the calendar month following the first premium payment, unless otherwise established.
- (4) Coverage will terminate on the earliest of:
 - a) The date the contract is terminated.
 - b) The end of the period for which premiums have been paid for the following:
 - (i) The withdrawal of deduction authorization for employee and/or dependents coverage;
 - (ii) The date premiums are due, payable and unpaid, except as a result of clerical or inadvertent error;
 - (iii) Termination of employment;
 - (iv) The date a dependent ceases to be eligible;
 - (v) The death of the employee.
- (5) Coverage for employees enrolled during the open enrollment period will be effective January 1st of the following year.

G. Claim Payment

For benefits to be payable under the Plan, the Contractor must receive a claim with all information necessary to determine liability by December 31st of the year following the year the service was rendered. However, the Contractor will not reduce or deny benefits for failure to meet this time limit if the Contractor is still authorized to pay on the State's behalf and if the claim was filed as soon as it was reasonably possible for the enrollee to do so.

Often the provider of service will file the claim. If the servicing provider does not file, the Contractor will supply enrollees with claim forms.

The Contractor will pay benefits due under the Plan to the enrollee, or, at its sole discretion, to the provider of the service from which benefits are claimed, or to both the enrollee and the provider of service jointly. No enrollee or dependent may assign such payment.

If other parties have paid benefits due under the Plan, the Contractor may reimburse those other parties and be fully discharged from that portion of its liability. If any enrollee makes a material misrepresentation on a claim or application for this Plan's benefits, the Contractor, on behalf of the State, may

cancel his/her Plan coverage, effective on or anytime after the date of this claim.

If the Contractor makes any payment on behalf of the State, that according to the terms of this Plan should not have been made, including payment made in error, the Contractor may recover that incorrect payment whether or not it was made due to Contractor's own error, from the person to whom it was made or from any other appropriate party.

If any such incorrect payment is made directly to an enrollee, the Contractor may deduct it when making future payment directly to that enrollee.

H. Subcontracting

The Contractor must obtain State Personnel Department and Department of Administration's approval before subcontracting all or any portion of this Contract. Any subcontract must be submitted at least six (6) months prior to the effective date of the subcontract. "Subcontractor" as used in the section does not include agreements between Contractor and its providers or subcontracts expressly authorized elsewhere in this document.

The foregoing provisions shall not apply to the following undertakings and/or conditions:

- (1) Any purchase, acquisition or procurement by the Contractor of supplies, equipment and materials in the normal course of the Contractor's business.
- (2) Any purchase, acquisition or procurement by the Contractor, the principle purpose of which does not directly involve the performance of obligations under this Contract.
- (3) Any purchase, acquisition or procurement precipitated by or arising from urgent program requirements which, in the exercise of prudent business judgment, compel immediate action by the Contractor to preserve and/or enhance the program or the interest of enrollees with coverage hereunder; provided that the State Personnel Department and Department of Administration give prior written approval for any purchase, acquisition or procurement which exceeds a 30 day period; however, all purchases, acquisitions or procurements shall be reported wherever possible and prior notice shall be given.

The Contractor will be responsible performance under the Contract, compliance with terms and condition of the Contract, and the requirements of federal and state equal opportunity and affirmative action statutes, rules and regulations whether or not subcontractors are used.

2. Consideration, and Premiums

A. Charges and Payment Terms

(1) Administrative Charge:

- (a) To compensate the Contractor for administrative services provided for State employees and Early Retirees, the State will pay administrative charges bi-weekly to the Contractor. The State's obligation does not include payment on behalf of Direct Bills or Local Units of Government. The administrative charge is computed by multiplying the number of Enrollees covered, times the rate specified below:

STATE OF INDIANA
SCHEDULE OF FINANCIAL VARIABLES
EFFECTIVE 01/01/08 to 12/31/11
BI-WEEKLY ADMINISTRATIVE CHARGES

	1/1/08 to 12/31/08	1/1/09 to 12/31/09	1/1/10 to 12/31/10	1/1/11 to 12/31/11
ADMIN. FEE				
SINGLE	\$XX	\$XX	\$XX	\$XX
FAMILY	\$XX	\$XX	\$XX	\$XX

- (b) The administrative charge stated above include the post active retention charge for claims paid in a year subsequent to the year in which the claims were incurred.

- (c) The above administrative rates are guaranteed for the four contract years.

- (2) Claims Expense Weekly Payments: The Contractor will deliver to the State a report of the amount of authorized claims paid under the terms of the Plan on the State's behalf during the prior week and the weekly administrative charges, which are based on the number of individuals covered. The State must receive this billing by 2:30 p.m. every Thursday to generate a payment the following working day. The payment will be delivered to the address identified in writing designated by the Contractor and the State.

- (4) State Account: The State and Enrollee contributions will be retained in a State account from which the weekly billings are paid. Only employee/employer contributions from Local Units of Government, direct bill agencies, employees on worker's compensation leave, leave of absence, COBRA and Retiree fees are remitted directly to the Contractor. These fees (other than the Local Unit of Government) are credited back to the State on the first billing in each month following the month that Contractor receives such amounts.

B. Dental Plan Information fees

STATE OF INDIANA
SCHEDULE OF INFORMATIONAL FEES
EFFECTIVE 01/01/08 TO 12/31/11

DENTAL PLAN

	ENROLLEES			
	1/1/08 to 12/31/08	1/1/09 to 12/31/09	1/1/10 to 12/31/10	1/1/11 to 12/31/11
SINGLE DENTAL				
BI-WEEKLY	\$XX	\$XX	\$XX	\$XX
MONTHLY	\$XX	\$XX	\$XX	\$XX
FAMILY DENTAL				
BI-WEEKLY	\$XX	\$XX	\$XX	\$XX
MONTHLY	\$XX	\$XX	\$XX	\$XX

- C. Fully-insured monthly premiums for Local Units of Government are contained in Exhibit E.
- D. Direct Bill Informational Fees and Premiums for Fully-Insured Products: The State has requested the Contractor to bill certain enrollees and agencies on a direct basis for Information Fees or fully-insured premiums. Coverage for these Enrollees is contingent upon receipt by the Contractor of the applicable Information Fees or premiums. Coverage for those in direct bill agencies and those fully insured is subject to the grace period. The State accepts no liability for the submission of these fees or premiums. It is hereby agreed that the Contractor will bill these individuals and agencies for Information Fees or premiums on a bi-weekly, monthly, or semi-annual basis, as specified. Any Information Fees received by the Contractor under this provision (other than Local Unit of Government premiums) will be credited to the State's billing on a monthly basis on the first billing each month following the month the Contractor receives such amount.
- E. The charges contained in the contract are the total of all charges by type and amount made under the Contract. Unless specifically provided elsewhere to be contrary to the terms hereof, no additional charges shall be claimed by the Contractor for the delivery, installation, utilization, and usage of the services provided herein, or any element thereof. All payments by the State will be made in arrears and shall be made in accordance with the Contract and the laws of Indiana.
- F. The State has thirty-five (35) day grace period within which the administrative charge and claims expense payments must be paid as provided herein. The State will in any case be liable for the full amount of claims appropriately paid on its behalf and the applicable administrative charge for services rendered. The nonpayment, within the grace period, by the State of the administrative charges and weekly claim expense payments constitutes an event of default.
- G. The Corporation warrants that no person or selling agency has been employed or retained by the Corporation to solicit or secure this Agreement upon an agreement or understanding for commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Corporation for the purpose of securing business.

For Breach or violation of this warranty the SPD shall have the right to terminate this Agreement in accordance with the Termination clause and, in its sole discretion, to deduct from the Agreement price and consideration or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fees.

3. Term

This Contract will cover a period that commences on January 1, 2008 and continues until December 31, 20XX unless terminated in accordance with provisions herein. Contractor shall pay claims that were incurred, but unreported before Contract termination.

4. Access to Records

The Contractor and its subcontractors, if any, shall maintain all books, documents, papers, accounting records, and other evidence pertaining to all costs incurred under this Contract. They shall make such materials available at their respective offices at all reasonable times during this Contract, and for seven (7) years from the date of final payment under this Contract, for inspection by the State or its authorized designees. Copies shall be furnished at no cost to the State if requested.

5. Assignment; Successors

The Contractor binds its successors and assignees to all the terms and conditions of this Contract. The Contractor shall not assign or subcontract the whole or any part of this Contract without the State's prior written consent. The Contractor may assign its right to receive payments to such third parties as the Contractor may desire without the prior written consent of the State, provided that the Contractor gives written notice (including evidence of such assignment) to the State thirty (30) days in advance of any payment so assigned. The assignment shall cover all unpaid amounts under this Contract and shall not be made to more than one party.

6. Audit and Evaluation

The SPD through any authorized representative, has the right at all times to audit or otherwise evaluate the work performed or being performed under this Agreement and the premises in which it is being performed. If any audit or evaluation is made on the premises of the Corporation or a subcontractor, the Corporation shall provide and shall require his subcontractor to provide all reasonable facilities and assistance for the safety and convenience of the authorized representatives in the performance of their duties. All such audits and evaluations shall be performed in such a manner as not to unduly delay the work. The Corporation shall assure that all Corporation and subcontractor claim files, books, documents, papers, accounting records or other evidence pertaining to costs incurred under this Agreement will be maintained by the Corporation for a period of at least seven (7) years following the final payment under this Agreement. The SPD, State Board of Accounts, or any of their duly authorized representatives shall have access to any such claim files, books, documents, records, and papers retained by the Corporation

for the purpose of making audit, examination, excerpts and transcripts until the expiration of the seven (7) year period following the final payment under this Agreement.

7. Authority to Bind Contractor

The signatory for the Contractor represents that he/she has been duly authorized to execute this Contract on behalf of the Contractor and has obtained all necessary or applicable approvals to make this Contract fully binding upon the Contractor when his/her signature is affixed, and accepted by the State.

8. Changes in Work

SPD and the Corporation shall be able to suggest changes, any other provisions of the Agreement notwithstanding. Any such changes shall be made in the following manner:

- A. For any change to this Agreement which does not affect the period of performance, fees, risk level or major benefit or administrative provisions of the Agreement, by written change notice from the SPD approved and countersigned by the Corporation.
- B. Any other change shall be by formal amendment of this Agreement signed by all parties required to affix their signature thereto by Indiana Law. Contractor shall make no claim for additional compensation in the absence of a formal amendment.

9. Compliance with Laws

- A. The Contractor shall comply with all applicable federal, state and local laws, rules, regulations and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment or modification of any applicable state or federal statute or the promulgation of rules or regulations thereunder after execution of this Contract shall be reviewed by the State and the Contractor to determine whether the provisions of this Contract require formal modification.
- B. The Contractor and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State as set forth in IC § 4-2-6 *et seq.*, IC § 4-2-7, *et. seq.*, the regulations promulgated thereunder, and Executive Order 04-08, dated April 27, 2004. If the Contractor is not familiar with these ethical requirements, the Contractor should refer any questions to the Indiana State Ethics Commission, or visit the Indiana State Ethics Commission website at <http://www.in.gov/ethics/>. If the Contractor or its agents violate any applicable ethical standards, the State may, in its sole discretion, terminate this Contract immediately upon notice to the Contractor. In addition, the Contractor may be subject to penalties under IC §§ 4-2-6, 4-2-7, 35-44-1-3, and under any other applicable laws.

- C. The Contractor certifies by entering into this Contract that neither it nor its principal(s) is presently in arrears in payment of taxes, permit fees or other statutory, regulatory or judicially required payments to the State. The Contractor agrees that any payments currently due to the State may be withheld from payments due to the Contractor. Additionally, further work or payments may be withheld, delayed, or denied and/or this Contract suspended until the Contractor is current in its payments and has submitted proof of such payment to the State.
- D. The Contractor warrants that it has no current, pending or outstanding criminal, civil, or enforcement actions initiated by the State, and agrees that it will immediately notify the State of any such actions. During the term of such actions, the Contractor agrees that the State may delay, withhold, or deny work under any supplement, amendment, change order or other contractual device issued pursuant to this Contract.
- E. If a valid dispute exists as to the Contractor's liability or guilt in any action initiated by the State or its agencies, and the State decides to delay, withhold, or deny work to the Contractor, the Contractor may request that it be allowed to continue, or receive work, without delay. The Contractor must submit, in writing, a request for review to the Indiana Department of Administration (IDOA) following the procedures for disputes outlined herein. A determination by IDOA shall be binding on the parties. Any payments that the State may delay, withhold, deny, or apply under this section shall not be subject to penalty or interest, except as permitted by IC § 5-17-5.
- F. The Contractor warrants that the Contractor and its subcontractors, if any, shall obtain and maintain all required permits, licenses, registrations, and approvals, and shall comply with all health, safety, and environmental statutes, rules, or regulations in the performance of work activities for the State. Failure to do so may be deemed a material breach of this Contract and grounds for immediate termination and denial of further work with the State.
- G. The Contractor affirms that, if it is an entity described in IC Title 23, it is properly registered and owes no outstanding reports to the Indiana Secretary of State.
- H. As required by IC 5-22-3-7:
 - (1) The Contractor and any principals of the Contractor certify that (A) the Contractor, except for de minimis and nonsystematic violations, has not violated the terms of (i) IC 24-4.7 [Telephone Solicitation Of Consumers], (ii) IC 24-5-12 [Telephone Solicitations] , or (iii) IC 24-5-14 [Regulation of Automatic Dialing Machines] in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and (B) the Contractor will not violate the terms of IC 24-

4.7 for the duration of the Contract, even if IC 24-4.7 is preempted by federal law.

- (2) The Contractor and any principals of the Contractor certify that an affiliate or principal of the Contractor and any agent acting on behalf of the Contractor or on behalf of an affiliate or principal of the Contractor (A) except for de minimis and nonsystematic violations, has not violated the terms of IC 24-4.7 in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and (B) will not violate the terms of IC 24-4.7 for the duration of the Contract, even if IC 24-4.7 is preempted by federal law.

10. Condition of Payment

All services provided by the Contractor under this Contract must be performed to the State's reasonable satisfaction, as determined at the discretion of the undersigned State representative and in accordance with all applicable federal, state, local laws, ordinances, rules and regulations. The State shall not be required to pay for work found to be unsatisfactory, inconsistent with this Contract or performed in violation of and federal, state or local statute, ordinance, rule or regulation.

11. Confidentiality of State Information

Due to the sensitive nature of some of the data that will be provided to SPD and the Corporation, the parties understand that, from time to time, during the term of this Agreement each may be required to work with information, data, and concepts which are of a confidential or sensitive nature. The Corporation and SPD expressly agree that they shall each maintain all data in confidence to the extent not otherwise prohibited by law and that they shall not use data for any purpose other than the performance of this Agreement. All confidential information released to the Corporation and the SPD will be secured by the respective parties to prevent unauthorized disclosure.

The parties further agree to have any of their employees, agents, or representatives who may be required to work with such data in the performance of Corporation's work under or in connection with the Agreement to individually comply with the confidentiality standards, including any personal screening of its personnel by SPD for security purposes.

The parties acknowledge that the services to be performed by Contractor for the State under this contract may require or allow access to data, materials, and information containing Social Security numbers or other personal information maintained by the State in its computer system or other records. In addition to the covenant made above in this section and pursuant to 10 IAC 5-3-1(4), the Contractor and the State agree to comply with the provisions of IC 4-1-10 and IC 4-1-11. If any Social Security number(s) or personal information (as defined in IC 4-1-11-3) is/are disclosed by Contractor, Contractor agrees to pay the cost of the notice of disclosure of a breach of the security of

the system in addition to any other claims and expenses for which it is liable under the terms of this contract.

Attached hereto and incorporated herein by reference as Exhibit ____ is a copy of Contractor's internal privacy/confidential information policy. Contractor agrees to comply with such internal privacy/confidential information policy with regard to data, materials, and information disclosed or otherwise provided to Contractor by the State under the terms of this contract.

12. Continuity of Services

The Contractor recognizes that the service(s) to be performed under this Contract are vital to the State and must be continued without interruption and that, upon Contract expiration, a successor, either the State or another contractor, may continue them. The Contractor agrees to:

- A. Furnish phase-in training, and
- B. Exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor.

13. Debarment and Suspension

- A. The Contractor certifies by entering into this Contract that neither it nor its principals nor any of its subcontractors are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from entering into this Contract by any federal agency or by any department, agency or political subdivision of the State. The term "principal" for purposes of this Contract means an officer, director, owner, partner, key employee or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the Contractor.
- B. The Contractor certifies that it has verified the state and federal suspension and debarment status for all subcontractors receiving funds under this Contract and shall be solely responsible for any recoupment, penalties or costs that might arise from use of a suspended or debarred subcontractor. The Contractor shall immediately notify the State if any subcontractor becomes debarred or suspended, and shall, at the State's request, take all steps required by the State to terminate its contractual relationship with the subcontractor for work to be performed under this Contract.

14. Default by State

If the State, sixty (60) days after receipt of written notice, fails to correct or cure any material breach of this Contract, the Contractor may cancel and terminate this Contract

and institute the appropriate measures to collect monies due up to and including the date of termination.

15. Disputes

- A. Should any disputes arise with respect to this Contract, the Contractor and the State agree to act immediately to resolve such disputes. Time is of the essence in the resolution of disputes.
- B. The Contractor agrees that, the existence of a dispute notwithstanding, it will continue without delay to carry out all its responsibilities under this Contract that are not affected by the dispute. Should the Contractor fail to continue to perform its responsibilities regarding all non-disputed work, without delay, any additional costs incurred by the State or the Contractor as a result of such failure to proceed shall be borne by the Contractor, and the Contractor shall make no claim within ten (10) working days following notification in writing by either party of the existence of a dispute, then the following procedure shall apply:
 - (1) The parties agree to resolve such matters through submission of their dispute to the Commissioner of the Indiana Department of Administration. The Commissioner shall reduce a decision to writing and mail or otherwise furnish a copy thereof to the Contractor and the State within ten (10) working days after presentation of such dispute for action. The presentation may include a period of negotiations, clarifications, and mediation sessions and will not terminate until the Commissioner or one of the parties concludes that the presentation period is over. The Commissioner's decision shall be final and conclusive unless either party mails or otherwise furnishes to the Commissioner, within ten (10) working days after receipt of the Commissioner's decision, a written appeal. Within ten (10) working days of receipt by the Commissioner of a written request for appeal, the decision may be reconsidered. If no reconsideration is provided within ten (10) working days, the parties may mutually agree to submit the dispute to arbitration or mediation for a determination, or otherwise the dispute may be submitted to an Indiana court of competent jurisdiction.
 - (2) The State may withhold payments on disputed items pending resolution of the dispute. The unintentional nonpayment by the State to the Contractor of one or more invoices not in dispute in accordance with the terms of this Contract will not be cause for Contractor to terminate this Contract, and the Contractor may bring suit to collect these amounts without following the disputes procedure contained herein.

16. Drug-Free Workplace Certification

The Contractor hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. The Contractor will give written notice to the State within ten (10) days after receiving actual notice that the Contractor or an employee of the Contractor in the State of Indiana has been convicted of a criminal drug violation occurring in the workplace. False certification or violation of this certification may result in sanctions including, but not limited to, suspension of contract payments, termination of this Contract and/or debarment of contracting opportunities with the State for up to three (3) years.

In addition to the provisions of the above paragraphs, if the total contract amount set forth in this Contract is in excess of \$25,000.00, the Contractor hereby further agrees that this Contract is expressly subject to the terms, conditions, and representations of the following certification:

This certification is required by Executive Order No. 90-5, April 12, 1990, issued by the Governor of Indiana. No award of a contract shall be made, and no contract, purchase order or agreement, the total amount of which exceeds \$25,000.00, shall be valid, unless and until this certification has been fully executed by the Contractor and made a part of the contract or agreement as part of the contract documents.

The Contractor certifies and agrees that it will provide a drug-free workplace by:

- A. Publishing and providing to all of its employees a statement notifying them that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Contractor's workplace, and specifying the actions that will be taken against employees for violations of such prohibition;
- B. Establishing a drug-free awareness program to inform its employees of (1) the dangers of drug abuse in the workplace; (2) the Contractor's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace;
- C. Notifying all employees in the statement required by subparagraph (A) above that as a condition of continued employment, the employee will (1) abide by the terms of the statement; and (2) notify the Contractor of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
- D. Notifying the State in writing within ten (10) days after receiving notice from an employee under subdivision (C)(2) above, or otherwise receiving actual notice of such conviction;

- E. Within thirty (30) days after receiving notice under subdivision (C)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) taking appropriate personnel action against the employee, up to and including termination; or (2) requiring such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency; and
- F. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (A) through (E) above.

17. Employment Option

If the State determines that it would be in the State's best interest to hire an employee of the Contractor, the Contractor will release the selected employee from any non-compete agreements that may be in effect. This release will be at no cost to the State or the employee.

18. Force Majeure

In the event that either party is unable to perform any of its obligations under this Contract or to enjoy any of its benefits because of natural disaster or decrees of governmental bodies not the fault of the affected party (hereinafter referred to as a "Force Majeure Event"), the party who has been so affected shall immediately give notice to the other party and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under this Contract shall be immediately suspended. If the period of nonperformance exceeds thirty (30) days from the receipt of notice of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this Contract.

19. Funding Cancellation

When the Director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of this Contract, this Contract shall be canceled. A determination by the Director of the State Budget Agency that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

20. Governing Laws

This Contract shall be construed in accordance with and governed by the laws of the State of Indiana and suit, if any, must be brought in the State of Indiana.

21. Indemnification

The Contractor agrees to indemnify, defend, and hold harmless the State, its agents, officials, and employees from all claims and suits including court costs, attorney's fees, and other expenses caused by any act or omission of the Contractor and/or its subcontractors, if any, in the performance of this Contract. The State shall **not** provide such indemnification to the Contractor.

22. Independent Contractor

Both parties hereto, in the performance of this Contract, shall act in an individual capacity and not as agents, employees, partners, joint venturers or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever. Neither party will assume liability for any injury (including death) to any persons, or damage to any property, arising out of the acts or omissions of the agents, employees or subcontractors of the other party.

The Contractor shall be responsible for providing all necessary unemployment and workers' compensation insurance for the Contractor's employees.

23. Information Technology Enterprise Architecture Requirements

If the Contractor provides any information technology related products or services to the State, the Contractor shall comply with all IOT standards, policies and guidelines, which are online at <http://iot.in.gov/architecture/>. The Contractor specifically agrees that all hardware, software and services provided to or purchased by the State shall be compatible with the principles and goals contained in the electronic and information technology accessibility standards adopted under Section 508 of the Federal Rehabilitation Act of 1973 (29 U.S.C. 794d) and IC 4-13.1-3. Any deviation from these architecture requirements must be approved in writing by IOT in advance. The State may terminate this Contract for default if the Contractor fails to cure a breach of this provision within a reasonable time.

24. (Not applicable)

25. (Not applicable)

26. (Not applicable)

27. Licensing Standards

The Contractor, its employees and subcontractors shall comply with all applicable licensing standards, certification standards, accrediting standards and any other laws, rules or regulations governing services to be provided by the Contractor pursuant to this Contract. The State will not pay the Contractor for any services performed when the Contractor, its employees or subcontractors are not in compliance with such applicable

standards, laws, rules or regulations. If any license, certification or accreditation expires or is revoked, or any disciplinary action is taken against an applicable license, certification or accreditation, the Contractor shall notify the State immediately and the State, at its option, may immediately terminate this Contract.

28. Merger & Modification

This Contract constitutes the entire agreement between the parties. No understandings, agreements, or representations, oral or written, not specified within this Contract will be valid provisions of this Contract. This Contract may not be modified, supplemented or amended, except by written agreement signed by all necessary parties.

29. Minority and Women's Business Enterprises Compliance

The Contractor agrees to comply fully with the provisions of 25 IAC 5 and any participation plan that may have been submitted to the State. The following MBE's and WBE's listed on the Minority and Women's Business Enterprises Division directory of certified firms will be participating in this Contract.

<u>MBE/WBE</u>	<u>PHONE</u>	<u>COMPANY NAME</u>	<u>SCOPE OF PRODUCTS and/or SERVICES</u>	<u>UTILIZATION DATE</u>	<u>AMOUNT</u>
<hr/>					
<hr/>					

The Contractor must obtain the approval of the Division before changing any MBE/WBE participation plan submitted in connection with this Contract.

30. Nondiscrimination

Pursuant to the Indiana Civil Rights Law, specifically including IC 22-9-1-10, and in keeping with the purposes of the federal Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disabilities Act, the Contractor covenants that it shall not discriminate against any employee or applicant for employment relating to this Contract with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of the employee or applicant's: race, color, national origin, religion, sex, age, disability, ancestry, status as a veteran, or any other characteristic protected by federal, state, or local law ("Protected Characteristics"). Furthermore, Contractor certifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination based on the Protected Characteristics in the provision of services.

31. Notice to Parties

Any notice required or permitted under this Agreement shall be deemed given when delivered in hand and receipt granted or sent by registered or certified mail, return receipt requested, and addressed as follows:

To the State Personnel Department:
Debra F. Minott, Director
402 West Washington St., Room W161
Indianapolis, Indiana 46204

To the Corporation:
XXXXX
XXXXX
XXXXX

To Local Unit:
To the Benefit Administrator designated in the Binder

32. (Not applicable)

33. Ownership of Documents and Materials

All documents, records, programs, data, film, tape, articles, memoranda, and other materials not developed or licensed by the Contractor prior to execution of this Contract, but specifically developed under this Contract shall be considered “work for hire” and the Contractor transfers any ownership claim to the State and all such materials will be the property of the State. Use of these materials, other than related to contract performance by the Contractor, without the prior written consent of the State, is prohibited. During the performance of this Contract, the Contractor shall be responsible for any loss of or damage to these materials developed for or supplied by the State and used to develop or assist in the services provided while the materials are in the possession of the Contractor. Any loss or damage thereto shall be restored at the Contractor’s expense. The Contractor shall provide the State full, immediate, and unrestricted access to the work product during the term of this Contract.

34. Payments

- A. All payments shall be made in arrears in conformance with State fiscal policies and procedures and, as required by IC 4-13-2-14.8, by electronic funds transfer to the financial institution designated by the Contractor in writing unless a specific waiver has been obtained from the Indiana Auditor of State. No payments will be made in advance of receipt of the goods or services that are the subject of this Contract except as permitted by IC 4-13-2-20.

- B. The Contractor shall receive and accept the administrative charge and the premiums provided for in this Contract as full payment for furnishing all materials and/or performing all services specified in this Contract in a complete and acceptable manner period. This shall also be payment in full for all damage or expense of whatever character arising out of the nature of the services. All payments will be subject to correction in subsequent payments.

35. Penalties/Interest/Attorney's Fees

The State will in good faith perform its required obligations hereunder and does not agree to pay any penalties, liquidated damages, interest or attorney's fees, except as permitted by Indiana law, in part, IC 5-17-5, IC 34-54-8, and IC 34-13-1.

Notwithstanding the provisions contained in IC 5-17-5, any liability resulting from the State's failure to make prompt payment shall be based solely on the amount of funding originating from the State and shall not be based on funding from federal or other sources.

36. Progress Reports

The Contractor shall submit progress reports to the State upon request. The report shall be oral, unless the State, upon receipt of the oral report, should deem it necessary to have it in written form. The progress reports shall serve the purpose of assuring the State that work is progressing in line with the schedule, and that completion can be reasonably assured on the scheduled date.

37. Renewal Option

This Contract may be renewed under the same terms and conditions subject to the approval of the Commissioner of the Department of Administration and the State Budget Director in compliance with IC 5-22-17-4. The term of the renewed Contract may not be longer than the term of the original contract. Any subsequent renewal to the Contract may include an increase, of up to the same percent that prices increased in the original contract, at the sole discretion of the State.

38. Security and Privacy of Health Information

The Contractor agrees to comply with all requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) in all activities related to this Contract, to maintain compliance throughout the life of this Contract, to operate any systems used to fulfill the requirements of this Contract in full compliance with HIPAA and to take no action which adversely affects the State's HIPAA compliance.

The parties acknowledge that the Department of Health and Human Services has issued the Final Rule, as amended from time to time, on the Standards for Privacy of Individually Identifiable Health Information, as required by HIPAA. To the extent

required by the provisions of HIPAA and regulations promulgated thereunder, the Contractor covenants that it will appropriately safeguard Protected Health Information (PHI), as defined by the regulations, which is made available to or obtained by the Contractor in the course of its work under this Contract. The Contractor agrees to comply with applicable requirements of law relating to PHI with respect to any task or other activity it performs for the State as required by the final regulations.

39. Severability

The invalidity of any section, subsection, clause or provision of this Contract shall not affect the validity of the remaining sections, subsections, clauses or provisions of this Contract.

40. Substantial Performance

This Contract shall be deemed to be substantially performed only when fully performed according to its terms and conditions and any written amendments or supplements.

41. Taxes

The State is exempt from most state and local taxes and many federal taxes. The State will not be responsible for any taxes levied on the Contractor as a result of this Contract.

42. Termination for Convenience

This Contract may be terminated, in whole or in part, by the State whenever, for any reason, the State determines that such termination is in its best interest. Termination of services shall be effected by delivery to the Contractor of a Termination Notice at least thirty (30) days prior to the termination effective date, specifying the extent to which performance of services under such termination becomes effective. The Contractor shall be compensated for services properly rendered prior to the effective date of termination. The State will not be liable for services performed after the effective date of termination. The Contractor shall be compensated for services herein provided but in no case shall total payment made to the Contractor exceed the original contract price or shall any price increase be allowed on individual line items if canceled only in part prior to the original termination date.

43. Termination

- A. With the provision of thirty (30) days notice to the Contractor, the State may terminate this Contract in whole or in part if the Contractor fails to:
 - (2) Correct or cure any breach of this Contract;
 - (3) Deliver the supplies or perform the services within the time specified in this Contract or any extension;
 - (4) Make progress so as to endanger performance of this Contract; or
 - (5) Perform any of the other provisions of this Contract.

- B. If the State terminates this Contract in whole or in part, under subsection 43A, it may acquire, under the terms and in the manner the State considers appropriate, supplies or services similar to those terminated, and the Contractor will be liable to the State for any excess costs for those supplies or services. However, the Contractor shall continue the work not terminated.
- C. The State shall pay the contract price for completed supplies delivered and services accepted. The Contractor and the State shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. The State may withhold from these amounts any sum the State determines to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders.
- D. The rights and remedies of the State in this clause are in addition to any other rights and remedies provided by law or equity or under this Contract.
- E. Should this agreement terminate for any reason, the Corporation will be expected to process all claims incurred prior to the date of termination and any extended liability claims payable in accordance with the benefit provisions of the plan. Contractor will continue to bill the Plan sponsor weekly for self-insured claims incurred and paid under the Plan. The Contractor shall not be entitled to an administrative fee for handling run-off claims. The weekly claims reimbursement billings will continue for a period of twelve (12) months from the termination date. The Contractor will then prepare a final billing comprising its estimate of the future cost of unpaid claims incurred under the Contract. This final billing, if agreed to by the State, is payable by the State within thirty (30) days of receipt.
- F. If this Contract should be terminated for any reason, upon request of the State the Contractor will provide will provide information relating to enrollees deductibles and maximums.

44. Travel

All travel and transportations costs (shipping, handling, postage, etc.) are to be born by the Contractor.

45. Waiver of Rights

No right conferred on either party under this Contract shall be deemed waived, and no breach of this Contract excused, unless such waiver is in writing and signed by the party claimed to have waived such right. Neither the State's review, approval or acceptance of, nor payment for, the services required under this Contract shall be construed to operate as a waiver of any rights under this Contract or of any cause of action arising out of the performance of this Contract, and the Contractor shall be and remain liable to the State in

accordance with applicable law for all damages to the State caused by the Contractor's negligent performance of any of the services furnished under this Contract.

46. Work Standards

The Contractor shall execute its responsibilities by following and applying at all times the highest professional and technical guidelines and standards. If the State becomes dissatisfied with the work product of or the working relationship with those individuals assigned to work on this Contract, the State may request in writing the replacement of any or all such individuals, and the Contractor shall grant such request.

47. State Boilerplate Affirmation Clause

This Contract has not been altered, modified or changed from the State's Boilerplate contract clauses (as defined in the March 2007 OAG/IDOA *Professional Services Contract Manual*) in any way except for the following clauses: 4, 6, 8, 11, 12, 24, 25, 26, 31, 32, 34, 37, 43, 44, and 47.

Non-Collusion and Acceptance

The undersigned attests, subject to the penalties for perjury, that he/she is the Contractor, or that he/she is the properly authorized representative, agent, member or officer of the Contractor, that he/she has not, nor has any other member, employee, representative, agent or officer of the Contractor, directly or indirectly, to the best of the undersigned's knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid, any sum of money or other consideration for the execution of this Contract other than that which appears upon the face of this Contract.

In Witness Whereof, Contractor and the State have, through their duly authorized representatives, entered into this Contract. The parties, having read and understood the foregoing terms of this Contract, do by their respective signatures dated below hereby agree to the terms thereof.

XXXXXX

By: _____
Printed Name: _____
Title: _____
Date: _____

STATE OF INDIANA

State Personnel Department

By: _____
Debra F. Minott, Director

Date: _____

Department of Administration

_____ (for)
Carrie Henderson, Commissioner

Date: _____

State Budget Agency

_____ (for)
Charles E. Schalliol, Director

Date: _____

APPROVED as to Form and Legality: Office of the Attorney General

_____ (for)
Stephen Carter, Attorney General

Date: _____